

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA NO.1948 of 1991

DATE OF DECISION: November 1, 2006

Smt.Sarta and another

....Appellants

VERSUS

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri S.K.Jain, Advocate for the appellants.

Shri H.S.Hooda, Advocate General, Haryana with

Shri Ramesh Hooda, Advocate for the respondents.

Viney Mittal,J.(Oral).

The present batch of first appeals have arisen out of a common award dated May 7, 1991 passed by the learned Additional District Judge, Rohtak assessing the market value of the acquired land. All the appeals have been filed by the claimant-land owners. The appellants have prayed for enhancement of compensation for their acquired land.

Vide a notification dated November 20,1988 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), land measuring 53.92 acres in village Bhupania, Tehsil Bhadurgarh, District Rohtak was notified for acquisition. The said notification was published in the official gazette on December 6, 1988. On actual measurement, the acquired

land turned out to be 53.68 acres i.e. 429 kanals 7 marlas. The purpose of acquisition was to construct Gurgaon Water Channel from RD 32 km to 44 km.

Vide an award dated January 25, 1990, the Land Acquisition Collector classified the land into four categories. For Nehri land, the market value was assessed at the rate of Rs.60,000/- per acre; for Chahi land, the market value was assessed at the rate of Rs.55,000/- per acre; for Barani land, the market value was assessed at the rate of Rs.40,000/- per acre; and gair mumkin land was assessed at the rate of Rs.35,000/- per acre. The claimants remained dis-satisfied with the aforesaid assessment of the market value and claimed references. The matter was duly referred under Section 18 of the Act. In the reference proceedings, the claimants claimed Rs.2,50,000/- as market value of the acquired land.

During the course of reference proceedings, the parties led their evidence. Besides producing the oral evidence, the claimants as well as the State of Haryana produced documentary evidence.

The claimants produced three sale instances as Ex.P1, Ex.P2 and Ex.P3 and an earlier judgment (Ex.P4) dated January 8, 1990, whereas, the State of Haryana produced sale instances Ex.R1 to Ex.R7. All the sale instances relied upon by the State of Haryana reflected a market value which was even less than as assessed by the Land Acquisition Collector. In these circumstances, the said evidence was not even relied upon by the Reference Court.

The Reference Court took into consideration the sale deeds Ex.P1 to P3 relied upon by the claimant land owners. However, the assessment of the market value was made on the basis of the

earlier judgment (Ex.P4) dated January 8, 1990. The Reference Court noticed that vide an earlier notification dated November 17, 1981, land had been notified for acquisition and for construction of houses for Harijans in the village and an award had been passed by the Land Acquisition Collector on September 28, 1984. In reference proceedings, arising out of the aforesaid acquisition proceedings, the Additional District Judge had enhanced the compensation to Rs.44,000/- per acre. Consequently, the Reference Court chose to give further enhancement of 11% per year for the time gap between the said acquisition and the present notification dated November 20, 1988. Consequently, the assessment of the market value for the present acquired land was made at the rate of Rs.72,000/- per acre for Nehri/Chahi land; and Rs.48,000/- per acre for Barani land; and Rs.42,000/- per acre for gair mumkin/banjar quadim/bhud land. The claimants were held entitled to statutory benefits, as admissible to them, in accordance with law.

The claimants have still remained dis-satisfied and have approached this Court through the present appeals.

I have heard Shri S.K.Jain, the learned counsel appearing for the appellants and Shri H.S.Hooda, learned Advocate General, Haryana appearing for the respondents and with their assistance have also gone through the record of the case.

At the outset, it may be relevant to notice that although the reference court has chosen to assess the market value of the acquired land on the basis of earlier award Ex.P4 but it has been informed during the course of arguments that the aforesaid award has not attained finality, inasmuch as, the appeals against the aforesaid

award are yet pending in this Court. In these circumstances, it is very fairly conceded by the learned counsel for the parties that the aforesaid award cannot be made the basis of assessment for assessing the market value of the acquired land.

The claimants have produced a sale deed Ex.P1, dated October 5, 1987 whereby approximately area of 763 square yards was sold for a consideration of Rs.20,000/- reflecting the price of Rs.1,28,000/- per acre. The sale deed Ex.P2 was executed with regard to the sale of 4 kanals of land on March 1, 1988 for a consideration of Rs.48,000/- reflecting the price of Rs.98,000/- per acre. The sale deed Ex.P3 was executed on March 13, 1989 pertaining to 57 kanals and 10 marlas of land for Rs.7,11,562/- reflecting a price of Rs.1 lac per acre. Although the sale deed Ex.P3 is post notification sale, inasmuch as, section 4 of the Act was issued on November 20, 1988 and the same was published in the official gazette on December 6, 1988, but still a fact which clearly emerges on the record is that the price reflected by the sale deed Ex.P2, executed on March 1, 1988 i.e. Rs.98,000/- per acre is almost the same as is reflected by the sale deed Ex.P3 executed on March 13, 1989 i.e. Rs.1 lac per acre. In these circumstances, it is apparent that the sale deed Ex.P3 also reflected the prevailing market value, which was the price even prior to the date of issuance of the notification. It cannot be thus suggested at all that the sale deed Ex.P3 being a post notification sale instance reflected any such price, which was inflated on account of the acquisition of land. It appears that the prices of the lands in the village had remained static as is reflected by the sale deeds Ex.P1, P2 as well as Ex.P3. Thus, all the three sale instances are relevant for

assessment of the market value of the acquired land. Besides the aforesaid fact, the sale instances Ex.P3 pertains to the sale of a large chunk of land i.e. 57 kanals 10 marlas of land.

It may also be relevant to notice here that the claimants who are the appellants before this Court and whose lands were acquired themselves had small holdings. It is only when the entire holding of each of the land owners is clubbed together that the same reflects a large area. As held by the Apex Court in Thakarsibhal Devjibhai and others v. Executive Engineer and another AIR 2001 Supreme Court 2424, the quantum of compensation has to be assessed keeping in view the area of sale instances and the area of each individual land owner. The following observations made by the Apex Court would be relevant to note here as under:

“As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex.16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each land owners holdings are of small area. Even otherwise, visioning in the line with submission for the State we find Ex.16 is about two hectares of land which cannot be

said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex.16 and the present land even if they are 5 kms, apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find as per map produced by the State the present acquired land is about 3 kms away from it, while the land under Ex.16 is about two kilometers away from it. The difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ex.16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs.10/- per sq. mtr. cannot be sustained.” (underlining supplied).

Keeping in view the facts and circumstances of the case and the price reflected by the sale instances Ex.P2 and Ex.P3 and applying a cut off 10% on the prices reflected by the sale deed Ex.P3, I find that the claimant-land owners should get Rs.90,000/- per acre as market value for their Nehri/Chahi land. Similarly, market value

of remaining acquired land including Barani, Gair Mumkin/Banjar Quadim/Bhud can be assessed at Rs.60,000/- per acre.

Ordered accordingly.

Besides the aforesaid compensation, the claimant land owners would also be entitled to other statutory benefits as admissible to them, in accordance with the provisions of the Act.

November 1, 2006
KD

(Viney Mittal)
Judge